

No. 15467

United States
Court of Appeals
for the Ninth Circuit

RICHMOND INVESTMENT COMPANY,
IRENE RUTH WOODS, MINTZER ES-
TATE COMPANY, MARIN LUMBER &
SUPPLY CO., and EVA OCKENDEN,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILE

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PAUL P. O'BRIEN



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21th

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Editorial
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

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SHERMAN, PETERS, ELLIOTT & HUTCHINS,
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San Francisco 4, California,
Attorneys for Appellants.

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Assistant U. S. Attorney General,
Washington 25, D. C.,
For Appellee.



In the District Court of the United States, in and
for the Northern District of California, South-
ern Division

No. 22417-W

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Certain Parcels of Land in the City of Richmond,
County of Contra Costa, State of California,
MINTAXER ESTATE, EMMA J. MALONE,
FLORENCE L. TAYLOR, J. A. BANZHOF,
RICHARD O'FARRELL, JAS. P. Mc-
AULIFFE, DELLA BINGHAM, IRENE
RUTH WOODS, MARINE LUMBER &
SUPPLY CO., EVA A. ACKENDEN, C.
BAUTI, CITY OF RICHMOND, COUNTY
OF CONTRA COSTA, STATE OF CALI-
FORNIA,

Defendants.

COMPLAINT IN CONDEMNATION

Comes now the Plaintiff, United States of Amer-
ica, by M. Mitchell Bourquin, Special Assistant to
the Attorney General, at the direction and under
the authority of the Attorney General of the United
States, and pursuant to the request of the Acting
Commissioner of the Federal Public Housing
Authority of the United States, and for cause of
action against the above-named defendants, alleges
as follows:

I.

That this proceeding is instituted and the lands hereinafter described are taken and condemned pursuant to and under the provisions and authority of and for the purposes and uses authorized by the Act of August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257); the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Secs. 258 (a) to 258 (e)); the Act of October 14, 1940 (Public No. 849, 76th Congress), as amended and Executive Order No. 9070, dated February 24, 1942, the Second War Powers Act (Public Law No. 507, 77th Congress), and Executive Order No. 9150, dated April 28, 1942, funds having been appropriated by the Act of October 14, 1940 (Public Resolution 106, 76th Congress) and Acts supplementary thereto and amendatory thereof.

II.

That the estate or interest which Plaintiff seeks to take and condemn is the full fee simple title in and to the lands hereinafter described, subject to utility easements, if any.

III.

That the lands hereinafter described have been selected by the Acting Commissioner of the Federal Public Housing Authority of the United States for use in connection with defense housing, Richmond, California, and are sought to be taken and condemned for said purpose and use and are suitable and necessary therefor. That said use of said lands constitutes a public use, and said lands

are required for immediate use in order to carry out said purpose.

IV.

That the acquisition of said lands by Plaintiff will be of the greatest public benefit and the least private injury; that no part of said lands has heretofore been appropriated for public use by plaintiff or the State of California, or any political subdivision thereof.

V.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just compensation for the lands sought to be taken and condemned herein in whatever sum may be ultimately awarded in this proceeding for the taking of said lands and any damages resulting therefrom.

VI.

That Plaintiff is informed and believes, and therefore alleges that the lands taken by this proceeding are not a part of any larger tract belonging to the apparent or purported owners of said land above described.

That the Defendants, First Doe to Tenth Doe, inclusive, and First Doe Corporation to Tenth Doe Corporation, inclusive, are sued and designated herein by fictitious names for the reason that their true names are unknown to Plaintiff, but the Plaintiff will, upon ascertaining their true names, substitute the same for such fictitious names by appropriate amendment, and prays such leave of the Court; that said defendants, and each of them, may

have or claim to have an interest in some piece or parcel of the lands sought to be taken and condemned in this action, but that the nature, character or extent of such interest is unknown to Plaintiff.

VIII.

That the apparent and purported owners of the property are as follows:

Parcel No.	Owner
1	Mintaxer Estate
2	Emma J. Malone
3	Florence E. Taylor
4	J. A. Banzhof
5	Richard O'Farrell
6	Jas. P. McAuliffe
7	Della Bingham
8	J. A. Banzhof
9	Irene Ruth Woods
10	J. A. Banzhof
11	Marine Lumber & Supply Co.
12	Eva A. Ackenden
13	Irene R. Woods
14	C. Bauti

That the City of Richmond and County of Contra Costa and the State of California may have or claim some interest in the above described property and are therefore joined as Defendants.

IX.

That the land to be taken and condemned in this proceeding is described as follows:

Wherefore, Plaintiff prays judgment:

1. (a) Decreeing that said lands above described, to the extent of the title and interest which Plaintiff seeks to acquire, are condemned for necessary public uses of the plaintiff, as authorized by law; that all of said lands are necessary and suitable thereto.

(b) Determining the value of the lands subject of this action, and each separate interest therein, and directing the payment for each separate interest to the persons entitled thereto.

2. For such other and further relief as the Court shall deem meet and proper in the premises.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to the Attorney General, At-
torney for Plaintiff.

Duly verified.

[Endorsed]: Filed December 29, 1942.

[Title of District Court and Cause.]

ANSWER OF CERTAIN DEFENDANTS

Now come the defendants named herein below and answering the complaint of the plaintiff herein, admit, deny and allege as follows:

1. These answering defendants allege that their respective properties are described and that the values thereof are as follows:

Name of Defendant Owner	Parcel No.	Lot No.	Block No.	Defendant's Valuation
Mintaxer Estate	1	4	27	\$ 400.00
Emma J. Malone	2	5	27	300.00
Florence E. Taylor	3	6	27	300.00
Richard O'Farrell	5	1	11	400.00
Jas. P. McAuliffe	6	2 to 8, inc.	11	2,200.00
Della Bingham	7	9 and 10	11	600.00
A. Hinchman, as interest may appear.....		(above numbered lots and blocks)		(as stated above)
J. A. Banzhof	4	7 plus (Res.)	27	1,300.00
Irene Ruth Woods	8	11 to 23, inc.	11	7,800.00
J. A. Banzhof	9	26 to 34, inc.	11	2,700.00
Marin Lumber & Supply Co.	11	24 and 25	11	2,000.00
Irene R. Woods	13	1, 2, 7 to 14, inc.	12	3,100.00
		21 to 31, inc., plus (Res.)	12	4,700.00
		15 and E. 6 ft. of 16	12	900.00
		18 and 19	12	1,400.00
			12	1,800.00

2. Admit the allegations contained in paragraphs I, II, III and V of plaintiff's complaint herein, excepting that these defendants allege that the said use of said lands to meet the lawful and proper needs of the plaintiff does not require the fee title of said lands but these defendants allege that leaseholds for the duration of the present war and emergency needs would be and are adequate, proper and reasonable for the plaintiff to take in the herein action for the public use and to carry out the alleged purposes of the plaintiff.

3. Admit the allegations in paragraph IV of plaintiff's complaint, excepting that these defendants deny that the acquisition of said lands and the fee title thereto by the plaintiff will cause or be of the least private injury, and these defendants allege that leaseholds as above alleged or fee title reserving the right of these defendants to have the said lands restored to them respectively upon the expiration of the public and plaintiff's need thereof upon reasonable repayment of any compensation allowed and paid to these defendants herein and reasonable adjustment of equities between the parties as of the time of such restoration; that these defendants are entitled to reasonable priority of reacquiring their said lands upon the termination of the plaintiff's and public need therefor.

4. Admit the allegations in paragraph VIII of plaintiff's complaint excepting as alleged in paragraph 1 of the herein answer.

Wherefore, these defendants pray judgment determining the reasonable and fair market value of their said lands, respectively, as of the date on which the said lands were taken by the plaintiff herein, and for the payment to these defendants of the said reasonable and fair values so determined as compensation to these defendants, respectively, and for such other and further relief as the Court shall deem meet and proper in the premises.

SHERMAN & PETERS,

Attorneys for Said

Defendants.

Duly verified.

To the Plaintiff above named :

You Will Please Hereby Take Notice that these answering defendants demand a jury trial in the above-entitled action.

SHERMAN & PETERS,

Attorneys for These Answer-
ing Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 27, 1943.

[Title of District Court and Cause.]

ANSWER OF EVA A. OCKENDEN

Now comes the defendant Eva A. Ockenden named herein below and aswering the complaint of the plaintiff herein, admits, denies and alleges as follows :

1. This answering defendant alleges that her respective properties are described and that the values thereof are as follows:

Name of Defendant Owner: Eva A. Ockenden.
Parcel No.: 12.

Lot No.: 17 and Westerly 19 feet of Lot 16.

Block No.: 12.

Defendant's Valuation: \$1,600.00.

2. Admits the allegations contained in paragraphs I, II, III and V of plaintiff's complaint herein, excepting that this defendant alleges that the said use of said lands to meet the lawful and proper needs of the plaintiff does not require the fee title of said lands, but this defendant alleges that leaseholds for the duration of the present war and emergency needs would be and are adequate, proper and reasonable for the plaintiff to take in the herein action for the public use and to carry out the alleged purposes of the plaintiff.

3. Admits the allegations in paragraph IV of plaintiff's complaint, excepting that this defendant denies that the acquisition of said lands and the fee title thereto by the plaintiff will cause or be of the least private injury, and this defendant alleges that leaseholds as above alleged or fee title reserving the right of this defendant to have the said lands restored to her upon the expiration of the public and plaintiff's need thereof, upon reasonable repayment of any compensation allowed and paid to this defendant herein and reasonable adjustment of equities between the parties as of the time of

such restoration; that this defendant is entitled to reasonable priority of reacquiring her said lands upon the termination of the plaintiff's and public need therefor.

4. Admits the allegations in paragraph VIII of plaintiff's complaint excepting as alleged in paragraph 1 of the herein answer.

Wherefore, this defendant prays judgment determining the reasonable and fair market value of her said lands as of the date on which the said lands were taken by the plaintiff herein, and for the payment to this defendant of the said reasonable and fair values so determined as compensation to this defendant, and for such other and further relief as the Court shall deem meet and proper in the premises.

SHERMAN & PETERS,
Attorneys for Said
Defendants.

Duly verified.

To the Plaintiff above named:

You Will Please Hereby Take Notice that this answering defendant demands a jury trial in the above-entitled action.

SHERMAN & PETERS,
Attorneys for Defendant Eva
Receipt of Copy acknowledged.
A. Ockenden.

[Endorsed]: Filed June 24, 1943.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the United States of America, hereinafter referred to as First Party, and certain defendants, represented by Sherman, Peters, Elliott & Hutchins, hereinafter referred to as Second Parties, as follows:

I.

That the above-captioned action is one to take the fee simple title to the land more specifically described in the complaint on file herein.

II.

That for the purpose of classifying the subject property as to value and to fix the fair compensation therefor, it is agreed that the full compensation for the taking of the fee simple title thereto if final judgment herein determines that the taking of fee title was proper, authorized and lawful, shall be as follows:

Corner lots on Cutting Boulevard at \$400.00 each.

Inside lots on Cutting Boulevard at \$300.00 each.

Corner lots on streets other than Cutting at \$200.00 each.

Inside lots at \$100.00 each.

III.

That there shall be reserved for determination as a matter of law by the Court all other issues of law

and fact, sitting without a jury, with every reasonable effort to shorten the time of trial to the issues relating to the legality and authority of the plaintiff to take, and for the purposes and uses all as more fully alleged in the complaint on file herein, the fee simple title to the subject property, and the parties hereto may by motion or responsive pleading present such issues for determination by the Court.

IV.

In the event the order or judgment of the Court shall be entered for the plaintiff, and become final, it is understood and agreed that from said sums agreed to be full compensation as set forth in paragraph II above, there shall first be paid from said compensation all taxes, liens, bonds, assessments or other claims as and when approved by the Court in and to the land the subject of this action as and to the persons and in the amounts determined by the Court.

In Witness Whereof the parties hereto have hereunto set their hands this 10th day of August, 1956.

UNITED STATES OF AMERICA,

By /s/ J. HAROLD WEISE,
Assistant United States Attorney, Attorney for
Plaintiff.

SHERMAN, PETERS,
ELLIOTT & HUTCHINS,

By /s/ DONOVAN O. PETERS.

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

MOTIONS SUBMITTED TO COURT
IN COURSE OF TRIAL

Motions for judgment for the defendants on each or all of the following grounds:

1. On the pleadings that the complaint herein fails to allege facts sufficient to state a cause of action for taking full fee title for the temporary use authorized in the Lanham Act.

2. That the taking of the fee title was an excessive taking of interest in lands beyond the quantum necessary for the temporary housing use for which it was condemned.

3. That the plaintiff has failed to prove a cause of action for the condemnation of fee title.

4. That the funds on deposit in this court are limited to payment for the temporary use of the lands taken.

5. That the interest taken in condemnation is a temporary interest which may be described as a terminable fee which terminated upon the completion or termination of the temporary use of temporary housing as specifically described in the Lanham Act.

6. That the taking of the fee title to the lands of these defendants is void to the extent of the excess interest beyond the quantum necessary for the temporary housing use for which it was taken and as expressly defined in the Lanham Act.

7. That the disposal or use of the lands of defendants herein other than for defense housing as authorized in the Lanham Act of the time of taking said lands in those condemnation proceedings, be restrained and enjoined.

Summary in Part Supporting Motions for Judgment

The statutory authorization by Congress, relied upon herein are contained in the Lanham Act (the Act of October 14, 1940, Public No. 849, 76th Congress; 54 Stat. 1125, 42 U.S.C.A. Secs. 1521, et seq.) as follows:

“Sec. 1521 (title 42) Federal Works Administrator’s Powers Respecting Defense Housing.

“In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Federal Works Administrator (hereinafter referred to as the ‘Administrator’) is authorized:

“(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of Title 10 and section 5 of Title 41), improved or unimproved lands or

interest in lands by purchase, donation, exchange, lease (without regard to sections 40a and 34 of Title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361-368, and 248a-258e of Title 40)."

It is respectfully submitted by defendants that in support of their petition herein, their motions should properly be granted for the protection of the rights of private owners of property, assured to them under the Constitution of the United States, by which Congress is empowered to authorize only such minimum exercise of the power of eminent domain as a specified nationally vital use might justify. In order to avoid and prevent any abuse of such a vital power by administrative agencies to which it might be delegated, every effort by both Congress and the Judiciary is deemed proper and urgent to see that such power is exercised only for the taking of such minimum quantum of interest in property from private owners as will meet the particular Government use or purpose—i.e., a temporary interest in property for a temporary use.

Authority to "Acquire" Fee Title by Purchase Differs From Authority to "Acquire by Condemnation"

A general survey of the position taken by the Housing Administrator in his interpretation of his powers under the Lanham Act to "acquire" land

or interests in lands for temporary defense housing "by purchase * * * or condemnation," reveals the mistaken theory of the Administrator in the herein condemnation proceedings.

For the sake of illustration and argument, if we assume that the Administrator had attempted to "acquire" by purchase, lease, exchange or donation, the fee title of lands for defense housing, it is clear that in doing so he would not have filed the herein proceedings to exercise the extraordinary governmental power of eminent domain in his acquisition of such lands. In such voluntary sale and purchase the common law rights of private ownership of property would not be invaded.

But, on the other hand, it is an entirely different procedure when he employs force and seeks to act under the authority of the Lanham Act "to acquire" lands or interests in lands "by condemnation." Such acquisition by the Administrator is controlled by well established rules of strict construction of laws governing the exercise of the extraordinary power of eminent domain. If the Administrator seeks to "acquire" by condemnation, he seeks to wield a governmental power in derogation of the common law rights of private ownership of property. Even if Congress went so far as to permit the Housing Administrator "to acquire" by ordinary purchase, the fee title absolute of lands under the Lanham Act merely for temporary defense housing, if he believes it "in the best interests of the government" to meet future housing needs of a

community, nevertheless, the instant that the Administrator steps beyond an ordinary civil purchase acquisition and seeks to acquire "by condemnation" he is acting under entirely different rules of law.

If he does not acquire by ordinary bargain and sale transaction but assumes a power to take in eminent domain, and to invade the common law rights of private property, he cannot take in that manner one iota beyond the strict purpose for which the property is authorized to be condemned under the strict interpretation of the Lanham Act. The authority to "acquire" fee title by purchase obviously differs from the authority to "acquire" by condemnation. Rules of strict construction of statutes authorizing acquisition by condemnation have been uniformly followed in holding that the taking of any excess quantum of interest in private property beyond the absolute necessity of the purpose and use for which the property is taken, is simply Void.

It seems reasonably to follow, that the taking of any quantum of interest in the property of these defendants in excess of a temporary, year-to-year leasehold interest, where there will clearly be an excess or "surplus" interest remaining after the temporary defense housing authorized by Congress under the Lanham Act has expired and been fulfilled, is excessive and void. If the Government administrative agency herein has taken what it calls an ostensibly permanent "fee" for temporary

defense housing under the Lanham Act, it is respectfully submitted that the Court has jurisdiction to determine that whether the quantum of interest taken is called a fee, or a qualified fee or a terminable fee, or an easement, is immaterial, as the power delegated to the Administrator under the Lanham Act cannot be stretched beyond the limits of absolute necessity of temporary housing by a mere use of words. Any excessive taking by condemnation is void. Whether an excessive acquisition by purchase would be void also is another question not involved in the present actions.

It seems clearly within the province of the Court to decide that the Lanham Act does not authorize the taking by condemnation of any excess interest more than a temporary use and occupancy in the lands of the defendants for temporary defense housing "for persons engaged in national defense activities," and it is respectfully urged that the herein motions and judgment be granted the defendants accordingly.

SHERMAN & PETERS,

By /s/ DONOVAN O. PETERS,
Attorneys for Certain
Defendants.

[Endorsed]: Filed November 9, 1956.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

The above-entitled action came on regularly for trial before this Court sitting without a jury on September 21, 1956. The plaintiff appeared by and through the United States Attorney, and the defendants, Mintaxer Estate, Emma J. Malone, Florence E. Taylor, Richard O'Farrell, Jas. P. McAuliffe, Della Bingham and A. Hinchman, appeared by and through their attorneys, Sherman, Peters, Elliott & Hutchins. The matter was by agreement of the parties submitted after oral discussion on written memoranda, all of which memoranda are now on file.

The Court has carefully considered each and all of the memoranda, the authorities there cited, and all other pertinent material. As a result of such consideration, the Court is of the view that every legal issue now sought to be raised by defendants in this case has been determined by the Court of Appeals in *Lewis vs. United States*, 200 F. 2d 183, and in each instance the issue has been determined adversely to the position which the defendants now seek to take in this case. This Court is bound by the decision of the Court of Appeals, so no useful purpose would be served by going beyond this statement of the Court's conclusion.

Under the conditions which now exist in this case, the Court finds adversely to the defendants above named on each motion and matter now be-

fore this Court. The plaintiff will, in accordance with the applicable law and the rules of this Court, prepare and lodge with the Clerk such orders, findings of fact and conclusions of law, form of judgment, and other documents as may be required to complete the final disposition of this case as to the defendants above named.

Dated: November 9, 1956.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed November 9, 1956.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came on regularly for trial before the Honorable Sherrill Halbert, sitting without a jury, on September 21, 1956. The plaintiff appeared by and through J. Harold Weise, Assistant United States Attorney, and the defendants, Richmond Investment Company, Irene Ruth Woods, Eva A. Ockenden and Marin Lumber & Supply Co., appeared by and through their attorneys, Sherman, Peters, Elliott & Hutchins, and pursuant to a stipulation of the parties filed herein, there was presented for determination by the Court the legality and authority of the plaintiff to take a fee simple title to the lands the subject of this

action, and the matter being submitted on written memoranda, and the Court being fully advised finds:

I.

That the Complaint in the above-entitled action was filed herein on the 29th day of December, 1942, and that on said date a Declaration of Taking was filed herein and the sum of Eight Thousand Five Hundred Eighty-two and 11/100 Dollars (\$8,582.11) was deposited in the Registry of the Court as estimated just compensation for the taking of the fee simple title to the lands the subject of this action, and that upon the filing of the Declaration of Taking and the depositing of the sum aforesaid, the fee simple title to said lands vested in the United States of America and the right to just compensation vested in the persons entitled thereto.

II.

That this proceeding was instituted and the lands hereinafter described were taken and condemned pursuant to and under the provisions and authority of and for the purposes and uses authorized by the Act of August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257); the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Secs. 258(a) to 258(e)); the Act of October 14, 1940 (Public No. 849, 76th Congress), as amended, and Executive Order No. 9070, dated February 24, 1942, the Second War Powers Act (Public Law No. 507, 77th Congress), and Executive Order No. 9150, dated April 28, 1942, funds having been appropriated by the Act

of October 14, 1940 (Public Resolution 106, 76th Congress) and Acts supplementary thereto and amendatory thereof.

III.

That the estate or interest which plaintiff seeks to take and condemn is the full fee simple title in and to the lands hereinafter described, subject to utility easements, if any.

IV.

That the lands hereinafter described were selected by the Acting Commissioner of the Federal Public Housing Authority of the United States for use in connection with defense housing, Richmond, California, and were sought to be taken and condemned for said purpose and use. That the said Acting Commissioner of the Federal Public Housing Authority did not act in bad faith and did not abuse his discretion in making said determination.

V.

That the property the subject of this action is situate in Canal Subdivision, City of Richmond, County of Contra Costa, State of California, and that the respective owners of the parcels of land hereinbelow particularly set forth have, by stipulation filed herein, agreed to accept as full, fair and just compensation for the taking thereof the respective sums, without interest, set opposite their names as follows, to wit:

Parcel	Lot	Block	Owner	Agreed Amount
1	4	27	Richmond Investment Company.....	\$200.00
2	5	27	Richmond Investment Company.....	\$200.00
3	6	27	Richmond Investment Company.....	100.00
5	1	11	Richmond Investment Company.....	200.00
6	2 to 8 incl.	11	Richmond Investment Company.....	800.00
7	9 & 10	11	Richmond Investment Company.....	200.00
9	24 & 25	11	Irene Ruth Woods.....	700.00
11	15 & Ely. 6' of 16	12	Marin Lumber & Supply Co.....	472.00
12	17 & Ely. 19' of 16	12	Eva A. Ockenden.....	528.00
13	18 & 19	12	Irene Ruth Woods.....	600.00

VI.

The Court finds that the allegation contained in paragraph 2 of defendants' answer that the said use of said lands to meet the lawful needs of the plaintiff does not require the fee simple title of said lands is not true; the Court further finds that the allegation of said defendants contained in paragraph 2 that a leasehold in said lands for the duration of the present war and emergency needs would be adequate and reasonable for the public uses of the plaintiff is not true.

Upon the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That title to the lands described in paragraph V above vested in fee simple in the United States of America upon the filing of the Declaration of Taking herein and the depositing in the Registry

of the Court of the sum aforesaid, and the fee simple title to said lands is deemed to be and is taken and condemned for the public uses of the United States of America as authorized by law, and that title to said lands above described in fee simple is now vested in the United States of America free and discharged of all claims and liens of every kind whatsoever.

II.

That the Acting Commissioner of the Federal Public Housing Authority of the United States acted within the scope of his power and authority in selecting the lands hereinabove described, and that his determination that a fee interest in said lands should be taken is final.

III.

That the just compensation for the property taken and condemned herein shall be pursuant to the stipulation of the parties filed herein, and as more particularly delineated in paragraph V of the Findings of Fact.

Let a Final Judgment be entered accordingly.

/s/ SHERRILL HALBERT,
Judge, United States District Court, Northern District of California.

Receipt of Copy acknowledged.

Lodged January 22, 1957.

[Endorsed]: Filed January 29, 1957.

In the District Court of the United States in and
for the Northern District of California,
Southern Division

No. 22417

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Certain Parcels of Land In the City of Richmond,
County of Contra Costa, State of California,
MINTAXER ESTATE, et al.,

Defendants.

Final Judgment

Upon the Findings of Fact and Conclusions of
Law herein, and good cause appearing therefor,

It Is Hereby Ordered, Adjudged and Decreed
that title to the lands hereinafter described vested
in fee simple in the United States of America upon
the filing of the Declaration of Taking herein and
the depositing in the Registry of the Court of the
sum of Eight Thousand Five Hundred Eighty Two
and 11/100 Dollars (\$8,582.11) as estimated just
compensation for the taking of the lands subject of
this action, and the fee simple title to said lands
is deemed to be and is taken and condemned for
the public uses of the United States of America as
authorized by law, and that title to said lands here-
inafter described, in fee simple, is now vested in the
United States of America free and discharged of
all claims and liens of every kind whatsoever.

It Is Further Ordered, Adjudged and Decreed that the Acting Commissioner of the Federal Public Housing Authority of the United States acted within the scope of his power and authority in selecting the lands hereinafter described, and that his determination that a fee interest in said lands should be taken is final.

It Is Further Ordered, Adjudged and Decreed that the respective sums, without interest, set opposite the names of the respective persons herewith enumerated be and the same are hereby awarded as full, adequate and just compensation for the taking of the respective parcels of land as hereinbelow set forth:

Parcel	Owner	Amount
1	Richmond Investment Company.....	\$200.00
2	Richmond Investment Company.....	100.00
3	Richmond Investment Company.....	100.00
5	Richmond Investment Company.....	200.00
6	Richmond Investment Company.....	800.00
7	Richmond Investment Company.....	200.00
9	Irene Ruth Woods.....	700.00
11	Marin Lumber & Supply Co.....	472.00
12	Eva A. Oekenden.....	528.00
13	Irene Ruth Woods.....	600.00

The lands, the subject of this Final Judgment, are situate in Canal Subdivision, City of Richmond, County of Contra Costa, State of California, and more particularly described as follows:

Parcel	Lot	Block
1	4	27
2	5	27
3	6	27
5	1	11
6	2 to 8 incl.	11

7	9 & 10	11
9	24 & 25	11
11	15 & Ely.	
	6' of 16	12
12	17 & Ely.	
	19' of 16	12
13	18 & 19	12

Dated January 29, 1957.

/s/ SHERRILL HALBERT,

Judge, United States District Court, Northern
District of California.

Entered in Civil Docket January 31, 1957.

Receipt of copy acknowledged.

Lodged January 22, 1957.

[Endorsed]: Filed January 29, 1957.

Entered January 31, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Richmond Investment Company, Irene Ruth Woods, Mintzer Estate Company, Marin Lumber & Supply Co., and Eva Ockenden, Defendants and Appellants above named, hereby appeal to the U. S. Court of Appeals for the Ninth Judicial Circuit, from the final judgment entered in the above-entitled action on January 30, 1957.

Dated: February 4th, 1957.

SHERMAN, PETERS,
ELLIOTT & HUTCHINS,

By /s/ DONOVAN O. PETERS,
Attorneys for Certain,
Defendants and Appellants.

[Endorsed]: Filed February 5, 1957.

[Title of District Court and Cause.]

STATEMENT OF POINTS

Pursuant to Rule 75 (d) of the Rules of Civil Procedure, the defendants-appellants hereby state the points on which they intend to rely on their appeal from the final judgment herein as follows:

1. Error of the court in refusing to grant defendants' motion for judgment on the ground that the taking by condemnation of the fee title in the present case was in violation of the established law in eminent domain.

2. Error of the court in failing to make a finding of fact that the fee title absolute rather than a lesser interest or a leasehold was Necessary for the public use as defined in the Lanham Act.

3. Error of the court in failing to make a finding of fact that the taking of the fee title would

cause or be of the least private injury to the private owners.

4. Error of the court in denying the defendants' motions for judgment on each of the seven stated grounds, said motions and supporting memorandum of authorities and established law in eminent domain having been filed with the court in the course of trial.

5. Error of the court in denying the said motions for judgment made and filed by the defendants on the ruling that "This Court is bound by the decision of the Court of Appeals" in *Lewis vs. United States*, 200 F. 2d 183, contrary to other decisions of the Court of Appeals with which the findings and rulings in the said *Lewis* case cannot be reconciled with the established law in eminent domain.

6. Error of the court in failing to make a finding of fact that the Lanham Act authorizes the taking of the fee title By Condemnation for the purpose and use as defined by Congress in that Act.

7. Error of the Court in making the following finding upon which judgment is erroneously predicated:

"That the said Acting Commissioner of the Federal Public Housing Authority did not act in bad faith and did not abuse his discretion in making said determination."

8. Error of the Court in failing to make a finding of fact that the Lanham Act or any other Act

of Congress or law vested discretionary power in the Acting Commissioner of Federal Public Housing Authority, to take by condemnation, the fee title absolute from private owners for the temporary wartime housing use as expressly described by Congress in the Lanham Act.

9. Error of the court in making a finding that the Acting Commissioner "did not act in bad faith and did not abuse his discretion" as an issue upon which to base judgment, it being misleading and not pertinent to any issue in the present case.

Dated: February 15th, 1957.

SHERMAN and PETERS,
Attorneys for Appellants;

By /s/ DONOVAN O. PETERS.

[Endorsed]: Filed February 15, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this court in the above-entitled case and constitute the record on appeal herein as designated by Counsel for the appellants:

Excerpt from Docket Entries.

Complaint.

Answer of Certain Defendants.

Answer of Eva A. Ockenden.

Stipulation of Facts.

Motions Submitted by Defendants to Court in
Court of Trial.

Memorandum Order of Court.

Findings of Fact and Conclusions of Law.

Final Judgment.

Notice of Appeal.

Designation of Record and Statement of Points
Upon Which Appellants Intend to Rely on Appeal.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court this
5th day of March, 1957.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15467. United States Court of Appeals for the Ninth Circuit. Richmond Investment Company, Irene Ruth Woods, Mintzer Estate Company, Marin Lumber & Supply Co., and Eva Ockenden, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 5, 1957.

Docketed: March 8, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.